

May 9, 2013

Secretary Ameri addressed the building orientation and the related definitions of the various setbacks.

Mr. Ramirez reiterated that maintaining a ten-foot setback along the boardwalk would be most appropriate.

Secretary Ameri felt that the setback definitions should be changed considering the orientation of the building, itself.

Motion made by Commissioner Tucker and seconded by Commissioner Kramer to adopt a resolution approving Setback Determination No. SA2013-002 as recommended by staff.

Chair Toerge indicated he does not see a down side to the three-foot setback or negative impacts to adjacent property owners. In an effort to create parity, he made a substitute motion.

Substitute Motion made by Chair Toerge and seconded by Secretary Ameri and carried (6 – 1), to adopt a resolution approving Setback Determination No. SA2013-002 with a three-foot rear-yard setback the northern property line.

Deputy Community Development Director Brenda Wisneski reported that staff reviewed the Resolution regarding the alley vacation distributed by the public speaker and has no issues of concern and maintains the recommendations.

AYES: Ameri, Brown, Hillgren, Myers, Toerge, and Tucker
NOES: Kramer

Secretary Ameri commented on the importance of having clear definitions of setback locations and directions.

ITEM NO. 3 441 OLD NEWPORT MEDICAL OFFICE BUILDING (PA2011-056)
Site Location: 441 Old Newport Boulevard

Deputy Community Development Director Wisneski introduced the item and addressed previous consideration by the Planning Commission, appeal of the Planning Commission's decision to the City Council and revisions made to the project update to accommodate additional parking. Therefore the original request has been modified to only require approval of off-site parking.

Assistant Planner Melinda Whelan provided a presentation addressing the proposed use, parking requirements, proposed off-site parking to be established at 445 Old Newport Boulevard, access and circulation, parking lot improvements, project-specific conditions of approval, private parking agreement, and recommendations.

Discussion followed regarding the appropriate signors of the application since the adjacent property is in bankruptcy, the terms of the parking agreement, the reciprocal easement agreement and lack of an estoppel certificate.

Ms. Mulvihill addressed consideration of duration as long as the use is in place.

Ensuing discussion pertained to the reciprocal easement agreement and the non-exclusive nature of the easement and the possibility of double counting the spaces. Specifically, Commissioner Tucker was concerned that if the land at 445 Old Newport Boulevard were developed for office use, the owner of that new building would have the right to use the parking spaces on that property that the 441 Building was also planning to use.

Ms. Wisneski indicated that staff evaluates the property and noted that per the conditions; the use will occur if the additional parking spaces become available off-site. If that does not occur, the use cannot be established. If the parking spaces are no longer available, the property owner is required to notify the City and establish alternative parking solutions.

Ms. Wisneski addressed the conditions of approval addressing the matter and noted the requirement to notify the City if the off-site parking spaces are no longer available.

Commissioner Tucker suggested the need for the reciprocal easement agreement to be exclusive to ensure availability of the ~~Off-site~~additional parking spaces that were being relied upon in allowing medical office use.

Commissioner Myers addressed previous parking studies, acknowledged the measures taken by the applicant and inquired regarding provisions for signage directing people to adjacent parking.

Ms. Whelan reported that the subject parking lots will be required to meet current code requirements related to signage and circulation. She added that there will be directional signage provided in both parking lots.

Commissioner Tucker suggested instead of signage that the off-site parking should be used~~commented on the possibility of assigning for~~ employee parking ~~to the off-site lot~~ so that customers would~~will~~ not need to park off-site.

Vice Chair Hillgren addressed the terms of the agreement and noted that the tenant will need to be made aware of the parking agreement.

Ms. Mulvihill noted that conditions could be added as suggested.

Chair Toerge invited the applicant to address the Planning Commission.

Ali Parvaneh, Attorney representing the applicant, noted the importance of identifying the nature of the bankruptcy of the adjacent property and reported that it has been in Chapter 11 (reorganization) since 2006 and that it will be fully independent of any effect or rights the adjacent property owner may be able to exercise. He noted that the property is not in bankruptcy, but rather the estate of the property owner.

Interested parties were invited to address the Planning Commission on this matter.

Richard Haskell, expressed concerns regarding problems with parking. He felt that people will not park off-site and that once the medical use is established, it will not move. He stated that the existing adjacent property is an eye-sore and stated he would have no objection to the City demolishing the existing building and making it into a parking lot.

Dr. Reni, expressed concerns regarding utilization of the property where off-site parking is being proposed. He felt that when the property is out of bankruptcy, someone will purchase and redevelop it. He indicated that the property is an eye-sore and a fire hazard. He felt that the proposed plan is unrealistic.

Sandy Haskell expressed concerns with the proposed plan and the condition of the property where off-site parking is being proposed.

Ali Parvaneh stated that his client has first right of refusal and is taking a risk that the property will be developed. He indicated that the Conditional Use Permit will allow his client to clean up the property.

There being no others wishing to address the Planning Commission, Chair Toerge closed the public hearing.

Chair Toerge noted there are circumstances where the Zoning Code allows mechanisms to facilitate parking where reasonable alternatives can be provided. He felt that there is a high degree of uncertainty as to how the property at 445 Old Newport Boulevard will be developed in the future.

Commissioner Kramer indicated that he finds the application inefficient and expressed concerns with the existing uncertainty.

Motion made by Chair Toerge and seconded by Commissioner Kramer to adopt a resolution to deny Conditional Use Permit No. UP2011-011.

Vice Chair Hillgren felt that the matter depends on the dissolution of the adjacent property and that there is a lack of a management plan regarding the off-site parking. He felt that the ultimate occupancy of the building needs to be considered, that there have been positive steps taken but that they are not supportable.

Commissioner Tucker noted that the Criterion No. 7 language as adopted in Ordinance No. 2007-003 required consistency with the General Plan.

In response to Commissioner Tucker's inquiry, Mr. Campbell affirmed Commissioner Tucker's statement and addressed interim Criteria No. 7 regarding landform alteration and noted that this interim policy was intended to serve as a bridge between the General Plan policies and a Zoning Code and the Coastal Implementation Plan. However, Mr. Campbell noted that Criteria No. 7 should not be interpreted to authorize development that could be inconsistent with General Plan or Coastal Land Use Plan policies.

Discussion followed with Commission Tucker and Mr. Campbell regarding the language of the General Plan and Coastal Land Use Plan policies. Mr. Tucker asked if the establishment of a predominant line of existing development, as identified in the policy, was meant to refer to~~should be~~ a canyon development setback regulatory program or if the policy language meant that the setbacks should be established on a lot by lot basis. Mr. Campbell responded indicating the intention of staff and the General Plan/Local Coastal Program Implementation Committee to establish a setback on a block basis based upon the predominant line of existing development and not on a property-by-property basis using stringlines. Commissioner Tucker noted the language was susceptible to a different interpretation. HeMr. Campbell noted that such a program does not exist but it is an ongoing effort that it would be completed with the Coastal Implementation Plan.

Mr. Tucker asked if a new regulation took the place of Criteria No. 7 when the Zoning Code was adopted.

Mr. Campbell replied that there was no specific regulation adopted to take the place of Criteria No. 7 for the canyons but affirmed the need for consistency with the applicable General Plan and Coastal Land Use Plan policies.

Mr. Tucker inquired about construction on adjacent lots that may have changed the determinations from the time the previous Planning Director's determination was made.

Mr. Campbell noted that there had been no additional construction on adjacent properties in this intervening time period.

Mr. Tucker inquired how stringlines could further restrict development along the canyon and noted that the stringline method leaves property owners at the fate of adjoining property owners with the most recent construction.

Mr. Campbell responded that few property owners opt to construct smaller residences that would result in a more restrictive development limit over time. Typically, larger homes are constructed, which could result in development further down the canyon over time.

Commissioner Tucker indicated that he did not understand how development could get bigger and bigger as a result of applying stringlines.

Vice Chair Hillgren inquired about the City's policy for the protection of visual resources and requested clarification.

Ms. Nova reported that it is the City's policy to protect views from public view points and public rights-of-way but not private views on private property. She discussed the existing public views of Buck Gully.

Vice Chair Hillgren commented on the various ways the predominant line of existing development might be enforced and wondered if it would apply in a vertical or horizontal dimension to the proposed project.

Ms. Nova responded that the recommended stringline aligns roughly with the topographic contours of the property and it would apply in a horizontal and vertical fashion, and does not allow for landform alteration beyond the established stringlines. Mr. Campbell noted that the methods chosen to identify a predominant line might depend on existing development patterns, what areas need to be protected and possibly the vantage point. He added that, in some cases, a horizontal dimension or a specific contour might be most appropriate to determine the appropriate development limit to achieve the goal of protecting the visual resource or sensitive environments. In this area, he reported that the revised recommendation (stringline)

challenges with using the stringline approach, existing topography, and other development patterns in the area.

In response to Vice Chair Hillgren's inquiry regarding topography, Ms. Rosenthal reported that their request considers the existing development pattern of surrounding lots, bearing in mind the severe topography to the north, lot sizes and relative distances from Hazel Drive. She also noted that 312 Hazel is a transitional lot more similar in topography to the lots to the south than the lots to the north.

Vice Chair Hillgren asked if the natural slope of Hazel Drive falls downward from East Coast Highway toward the ocean.

Ms. Rosenthal reported that she did not feel the slope of Hazel Drive made much difference, but rather, that Buck Gully was the defining feature in the topography.

Dr. Ou, property owner of 316 Hazel Drive, reported that his permit expired and that he was advised that it would not be reinstated. He asked if there has been any change in the existing codes and stated that the same staff that issued the permit informed him that it cannot be reissued.

Interested parties were invited to address the Planning Commission on this matter.

Gloria Tomer, owner of 320 Hazel, stated that she and her husband bought the house with an ocean view and expressed concerns over increased development in the area. She hoped that her view or access will not be negatively impacted.

Michelle Brown, realtor for Dr. Ou and resident of Corona Del Mar, addressed the risk of views being blocked by development and commented on the inequality of establishing stringlines based on neighbors existing development and the efforts and costs expended by the applicants in this matter. She urged the Planning Commission to establish equitable guidelines.

Jim Mosher addressed Coastal Land Use Plan policies and the constraints and lack of consistency with stringlines based on development on adjacent lots. He commented on the Coastal Commission's definition of "stringline" and felt that topography is not being respected with the revised recommendation by staff. He referenced the Coastal Act, the need for permits to remove vegetation and the need for consistency with the Zoning Code in effect in 1977 in order to qualify for a categorical exclusion order.

There being no others wishing to address the Planning Commission, Chair Toerge closed the public hearing.

Commissioner Kramer addressed the difficulty of the case and noted that he felt for the applicant. He then noted the Planning Commission's responsibility to implement the approved policy of the City Council rather than to suggest policy changes. He indicated his belief that the policy is not the best; however, the language is clear as to how it should be implemented.

Commissioner Tucker felt that the language matter in the General Plan and the Coastal Land Use Plan is unclear, that the language of the policy is inconsistent. He noted the language on stringlines and addressed setbacks, the language on the predominant line of development are, and related inconsistencies. He further noted that the policies in the General Plan and the Coastal Land Use Plan had not changed since they were adopted, that nothing took the place of Interim Criteria No. 7, which was by definition consistent with the General Plan and Coastal Land Use Plan and that there had been no new development on either side of the two properties before the Commission for years, thus no new structures from which to measure a stringline. He noted that staff had previously made a decision and found the development limit consistent with Criteria No. 7, and therefore, the General Plan policies. Thus, the City should be held to a consistent determination on the same lots. Commissioner Tucker noted that nothing has changed to make the previous determination invalid.

In response to an inquiry from Vice Chair Hillgren, Commissioner Tucker addressed considering similarly-situated structures, not just directly adjacent properties. He noted that the applicants' plans were previously approved and that nothing has changed to affect the previous determination that would make him think that this prior determination was erroneous. He noted that the General Plan Glossary, from which he read, had a

detailed definition for the phrase “predominant line of development” that would be wholly ignored if the concept of a stringline were to take precedent. Given that the inconsistency between the concept of a stringline and the concept of a predominant line of development appeared in the same policy, he did not believe it was proper to use a stringline type of analysis when the same houses under the same circumstances were previously approved by staff based upon a predominant line of development.

In response to an inquiry from Commissioner Kramer, Ms. Mulvihill clarified the approach considering that there are two properties. She also stated that when the development determination was made previously, it was made clear that it was being done under an interim ordinance, which would be terminated as soon as the Zoning Code was adopted and updated. She stated that it is staff's and the City Attorney's office position that to go beyond adjacent corners of existing structures, is not consistent with the General Plan or Coastal Land Use Plan.

Discussion followed regarding the application process for considering the two properties together as a whole.

Chair Toerge acknowledged the difficulty of the issues with this case and commented on the previous determination and the need for fairness to the community and consistency. He acknowledged that times change, codes change, and that development permits have time limits on them. He requested additional vertical view analysis of the two properties with proposed development. Chair Toerge identified that he would not have supported the prior Planning Director's determination had it come before the Planning Commission. Based on his review of the application, he identified that he felt staff's recommendation would be the most fair to the community.

Motion made by Chair Toerge and seconded by Commissioner Kramer and carried (6 – 1), to accept staff's recommendation and adopt a resolution, modifying the decision of the Community Development Director establishing canyon development stringlines for principal and accessory structures at 312 Hazel Drive pursuant to General Plan Policy NR23.6 and Coastal Land Use Plan Policy 4.4.3-18; and adopt a resolution, modifying the decision of the Community Development Director and establishing canyon development stringlines for principal and accessory structures at 316 Hazel Drive pursuant to General Plan Policy NR23.6 and Coastal Land Use Plan Policy 4.4.3-18, incorporating the correct meeting date into the resolutions.

Vice Chair Hillgren expressed his hope that the matter will result in an appropriate policy to address this matter and asked for a summary of an appropriate policy in a couple of sentences. He acknowledged the goal to be judicious about where development occurs and that he could not come to any conclusion as to how the prior development determinations were made.

Chair Toerge addressed an upcoming meeting of a General Plan Implementation Plan Committee where canyon development policies will be addressed.

AYES: Ameri, Brown, Hillgren, Kramer, Myers, and Toerge
NOES: Tucker

RECESS AND RECONVENE

Chair Toerge called for a recess at 9:29 p.m. The assembly reconvened at 9:40 p.m. with all Members, present.

ITEM NO. 5 2014-2021 HOUSING ELEMENT UPDATE (PA2012-104) Site Location: Citywide

Chair Toerge reported receiving late correspondence regarding the aforementioned item and stated that he did not have sufficient time to review all of the information provided.

Motion made by Commissioner Kramer, to continue the item until the next regular meeting of the Planning Commission.

Commissioner Tucker reported reviewing the information and suggested discussing the issue.